

**Illinois Department of Revenue
Regulations**

Title 86 Part 100 Section 100.5220 Designated Agent for the Members
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TITLE 86: REVENUE

**PART 100
INCOME TAX**

Section 100.5220 Designated Agent for the Members

- a) Qualification. The members of a combined group must designate the controlling corporation as the agent if the controlling corporation is a member of the combined group. Otherwise, the members of the combined group must choose which Illinois taxpayer member will be the designated agent. Designation of the agent is made on Schedule UB. Instances in which a controlling corporation will not be a member of the combined group include:
 - 1) The combined group is comprised of corporations which are wholly owned by an individual. In this instance, there is no controlling corporation.
 - 2) A manufacturing corporation required to apportion its business income under IITA Section 304(a) owns a unitary business group of financial organizations required to apportion their business income under IITA Section 304(c). IITA Section 1502(a)(27) provides that corporations which use different apportionment formulas under IITA Section 304 may not be included in the same unitary business group. Accordingly, the controlling corporation in this example may not be in the same combined group as its financial organization subsidiaries.
 - 3) The controlling corporation does not have nexus with Illinois, and thus is not an Illinois taxpayer. Only Illinois taxpayers may be members of a combined group.
- b) Scope of Agency. The designated agent, for all purposes other than the making of the consent required by Section 100.5210(a)(2) of this Part, shall be the sole agent for each member of the combined group, duly authorized to act in its own name in all matters relating to the tax liability for the combined return year. Except as provided in the preceding sentence, no member shall have authority to act for or to represent itself in any such matter. For example, all correspondence between the Department and the combined group will be carried on directly with the designated agent; the designated agent shall file for all extensions of time; notices of deficiencies will be mailed only to the designated agent, and the mailing to the designated agent shall be considered as a mailing to each member in the group; notice and demand for payment of taxes will be given only to the designated agent and such notice and demand will be considered as a notice and demand to each member. All taxes, including estimated taxes, shall be paid in the name of the designated agent. The designated agent shall participate in investigations and hearings on behalf of each member; it shall make available the information necessary to conduct those proceedings; and it may execute a power of attorney on behalf of itself and the other members of the combined group. The designated agent will file combined returns and claims for refund or credit, and any

refund will be made directly to and in the name of the designated agent and will discharge any liability of the State in respect thereof to any member of the combined group; and the designated agent in its name will give waivers and execute closing agreements and all other documents, and any waiver so given, or agreement or any other document so executed, shall be considered as having also been given or executed by each member of the combined group. Notwithstanding the preceding provisions, if the Department deals in good faith with a member representing itself to be designated agent for a combined group, any action of such member or of the Department in the course of such dealing shall have the same effect as if such member were the designated agent.

- c) Notices from the Department. Notwithstanding the provisions of subsection (b) above, any Notice of Deficiency, in respect to the tax for a combined return year, will identify each corporation which was a member of the combined group during any part of the period covered by such notice. A failure to properly list all members of the combined group will not affect the validity of the Notice of Deficiency as to any member. Any notice and demand for payment will be sent to the designated agent and the Department will, if requested by the designated agent, identify each corporation which was a member of the combined group during any part of the period for which the notice and demand is issued. Any levy, any notice of a lien, or any other proceeding to collect the amount of any assessment, after the assessment has been made, will name the corporation from which such collection is to be made.
- d) Continuity of Agency. The provisions of subsections (b) and (c) above shall apply to those tax years for which a combined return is required to be made, whether or not a combined return is made for any subsequent year, and whether or not one or more persons have become or have ceased to be members of the combined group at any time.
 - 1) Once a member of a combined group is appointed as the designated agent for that combined group, it shall remain the designated agent for all future years unless:
 - A) the designated agent ceases to be an eligible member of the combined group, in which case a new designated agent must be appointed for purposes of common taxable years ending after the date the designated agent ceases to be an eligible member;
 - B) the controlling corporation of the unitary business group either becomes an eligible member or is replaced as controlling corporation by an eligible member, at which time the controlling corporation shall become the designated agent for purposes of common taxable years ending thereafter.
 - 2) The designated agent which files a return for a common taxable year must continue to act as designated agent for the combined group for that common taxable year unless:
 - A) the designated agent is being dissolved or a new designated agent has been appointed for the combined group under subsection (d)(1) above, and, in either case, the designated agent notifies the Department in writing that another member of the combined group (or a successor

corporation of any member of the combined group) will thereafter act as designated agent for that common taxable year. The member appointed as the substitute designated agent for this purpose need not be the new designated agent appointed under subsection (d)(1) above. The substitute designated agent will succeed to the rights and responsibilities of the former designated agent under subsections (b) and (c) above, and may in turn appoint another substitute designated agent under this subsection (d)(2)(A); or

B) if the designated agent is unable or unwilling to satisfy the tax liability of the combined group or is unresponsive, the Department may, upon notifying the designated agent, deal directly with any member of the combined group in respect to its liability, in which event such member shall have full authority to act for itself.

- e) Notification of deficiency to corporation which has ceased to be a member of the combined group. If a corporation that made the election to file or was required to join in the filing of a combined return has ceased to be a member of the combined group, and if such corporation files written notice of such cessation with the Department, then the Department upon request to such corporation will furnish the corporation with a copy of any Notice of Deficiency in respect of the tax for a combined return year for which it was a member of the combined group and information regarding any notice and demand for payment of such deficiency. The written notice of cessation should be mailed to the address stated in the instructions to Illinois Schedule UB. The filing of such written notification and request by a corporation shall not have the effect of limiting the scope of the agency of the designated agent provided for in subsection (b) above with respect to those tax years during which the corporation was a member of the combined group and a failure by the Department to comply with such written request shall not have the effect of limiting the liability of such corporation provided for in Section 100.5250 of this Part.
- f) Appointment of designated agent for purposes of resolving disputes over membership in a combined group. If the Department determines that one or more corporations which did not join in the filing of a combined return are members of a combined group, or that one or more corporations which did join in the filing of a combined return are not members of the combined group which filed the return, then, for purposes of resolving disputes over the membership of the combined group and any separate company item of any such corporation:
 - 1) If no combined return was filed, the corporations may appoint a member of the combined group as the designated agent solely for purposes of contesting the Department's determination. The Department may accept a written representation made by any member of the combined group that it has been appointed the designated agent. The appointment of a designated agent under this provision shall not be construed as a concession by either the corporations or the Department regarding the proper composition of the combined group. The designated agent appointed under this provision shall have all rights and responsibilities of a designated agent under this Section. The designated agent appointed under this subsection (f) must meet the qualifications of subsection (a) of this Section and must continue to act as designated agent for the combined group under the provisions of subsection (d) of this Section.

2) If a combined return was filed, the designated agent which filed the return shall represent all corporations which joined in the filing of the combined return and all corporations which the Department asserts are members of the combined group; provided, however, that the Department may allow any corporation which the Department asserts should be added to or eliminated from the combined group included in the return to represent itself after receipt of a written request from such corporation; provided further that, in such case, any such corporation shall be bound by any action taken by the designated agent (including, for example, extensions of the statute of limitations, settlements, stipulations or concessions of fact) before the request of such corporation to represent itself has been accepted by the Department.

(Source: Amended at 22 Ill. Reg. 19033, effective October 1, 1998)

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